In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1221

FRANK MARKARIAN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The Internal Revenue Code of 1954 allows a taxpayer a $600 deduction for each dependent "over half of whose support" during the tax year was furnished by the taxpayer. Code §§ 151, 152. The statute does not define the word "support," and this case involves the meaning of that word.

In his 1958 and 1959 federal income-tax returns petitioner, an accountant, claimed his mother as a dependent. During the years here in question, petitioner's mother lived with him in a house owned jointly by him and his brother. It is agreed that

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in each of the years $3,160 in actual expenses were incurred in her support, of which petitioner contributed $1,302, *i.e.*, less than half. However, petitioner also took care of his mother, who was apparently an invalid. By calculating the fair market value of these services at $3,600 per year and adding this amount to the actual expenses he incurred, petitioner argued that he had provided more than one-half of her support. The Commissioner disallowed the claimed dependency exemption on the ground that the Regulations prohibit a taxpayer from including the value of personal services as an item of support, and the Tax Court sustained the Commissioner. The court of appeals affirmed, and a petition for rehearing, *en banc,* was denied with one dissent (Pet. A1–A9; R. 3–9).[1]

The decision below is correct, and there is no conflict of decisions or other ground for review.

1. Whether petitioner is entitled to a dependency exemption for his mother under Sections 151 and 152 of the Code depends on whether he furnished more than one-half of his mother's support, and this in turn depends upon whether he may properly assign a value for his services to her as an item of support. The pertinent Treasury Regulations define the term "support" as including the amount of expenses incurred, together with the fair market value of

[1] "R." references are to the appendix to the respondent's brief in the court of appeals, a copy of which has been lodged with the Clerk of this Court.

property and lodging furnished by the taxpayer. See Treasury Regulations on Income Tax (1954 Code) § 1.152–1(a)(2)(i). As the court of appeals recognized, this definition was deliberately designed to exclude the value of services because of "the virtual impossibility both in arriving at a proper value for support furnished in the form of services and also in deciding whether or not such services constitute support" (Pet. A4).

Petitioner argues that the Regulations are invalid. However, it is well established that the Commissioner's Regulations are binding unless they are unreasonable. *Commissioner* v. *South Texas Co.*, 333 U.S. 496. The Regulations here in question are manifestly reasonable, in light of the extreme difficulty which the Commissioner would encounter in attempting (1) to place a value on such personal services as bathing, dressing, and caring for an aged relative or a young child, and (2) to ascertain which of such services constitute "something more than furnishing the ordinary kindnesses and helpfulness * * * that one able member of a household furnishes another less able." *Bartsch* v. *Commissioner*, 41 T.C. 883, 887.

2. There is no conflict of decisions. The only other case specifically dealing with the question presented by the instant case also held that the value of services rendered by the taxpayer to an aged mother may not be included in computing support for dependency purposes. *Bartsch* v. *Commissioner, supra.*

Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.
MITCHELL ROGOVIN,
Assistant Attorney General.
MELVA M. GRANEY,
HOWARD J. FELDMAN,
Attorneys.

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October Term, 1965

FRANK MARKARIAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

REPLY BRIEF BY THE PETITIONER

FRANK MARKARIAN, *pro se*
636 Park Avenue
South Milwaukee,
Wisconsin 53172

HANNERSMITH-KORTMEYER CO. MILWAUKEE